

## **REMARKS**

### **Summary**

This response is in reply to the final Office Action mailed May 11, 2007. Applicants have currently canceled claims 2-3, 12, and 39. Applicants have also amended claims 1, 11, and 37 to include the subject matter of the canceled claims. Claims 4, 5, 10, and 13-15 have been amended for proper dependency. Applicants have also included additional claims 44-49. Support for the subject matter of claims 44-52 can be found throughout the application as originally filed, and in particular, at pages 8-11 of the original application and in original claims 5-7.

No new matter has been entered as a result of these amendments. Claims 1, 4-8, 10-11, 13-15, 17-20, 37-38, 40, and 42-52 are currently pending.

### **Canceled Claims 2-3, 12, and 39**

In this reply, Applicants have canceled claims 2-3, 12, and 39. Accordingly, the rejections against these claims have been rendered moot. Hence, Applicants respectfully request withdrawal of the rejections against these claims.

### **Claims 1, 4-8, and 10: Rejections Under 35 U.S.C. § 103(a)**

Claims 1, 4-8, and 10 have been rejected under 35 U.S.C. § 103(a). Applicants respectfully traverse the rejections as to claims 1, 4-8, and 10 in view of the following remarks and arguments. In particular, Applicants respectfully submit that amended claim 1 is allowable over Akiyama *et al.* (CA 2387386) in view of Reynolds *et al.* (U.S. Pat. No. 7,020,888), in further view of Blackketter *et al.* (U.S. Pat. No. 7,159,232), and in further view of Herz *et al.* (U.S. Pat. No. 6,088,722), and that because claim 1 is allowable, the claims that depend therefrom are also allowable.

Claim 1 has been amended to recite the subject matter of now canceled claims 2 and claim 3. In particular, claim 1 has been amended to include “selecting the replacement advertising segment based on a viewer profile” and “developing the viewer profile based on viewer interaction with the replacement advertising segment.” With

regard to now canceled claim 3, the final Office Action states Akiyama *et al.*, Reynolds *et al.*, and Blackketter *et al.*, alone or in combination, fail to disclose “a method comprising developing a viewer profile based on viewer interaction with the replacement advertising segment.” Office Action mailed May 11, 2007, p. 10. The final Office Action then states that “[i]n an analogous art, Herz discloses a method in which a passive feedback technique is provided whereby the programming viewed by the customers are automatically monitored and used to adjust the customer profiles – col. 14, lines 17-21.” *Id.* Applicants respectfully disagree and submit that, Herz *et al.* does not, in fact, teach or suggest this limitation.

In contrast to amended claim 1, Herz *et al.* does not teach or suggest “developing the viewer profile based on viewer interaction with the replacement advertising segment.” In general, Herz *et al.* discloses a “a system and method for making available the video programming and other data most desired by the customer by developing an “agreement matrix” characterizing the attractiveness of each available source of video programming or data to each customer.” Herz *et al.*, col. 4, ll. 25-29. Herz *et al.* further explains that “the invention is used for scheduling customer access to video programs” by obtaining “objective customer preference profiles.” *Id.* at col. 4, ll. 45-50. Herz *et al.* discloses that the “objective customer preference profiles” are determined from “relevance feedback techniques” including a “passive feedback technique” and “active feedback.” See *id.* at col. 14, ll. 17-23.

The portion of Herz *et al.* cited by the final Office Action discusses the use of a “passive feedback technique” and “active feedback.” That portion is excerpted below:

In accordance with the invention, a passive feedback technique is provided whereby the programming viewed by the customers are automatically monitored and used to adjust the customer profiles. That technique will be described in more detail in Section V below. This section will instead refer to an active feedback mechanism which will be referred to as a “rave review.” *Id.* at col. 4, ll. 17-23.

According to Herz *et al.*, passive feedback and active feedback are fundamentally different. Herz *et al.* succinctly explains the difference:

Monitoring viewing patterns is referred to herein as “passive” feedback, since unlike such prior art **“active” feedback systems** where the

**customers actually rate** how much they like particular programs (see, e.g., Strubbe, U.S. Pat. No. 5,223,924), **passive monitoring** in accordance with the invention **does not require any customer actions**. (emphasis added). *Id.* at col. 30, ll. 43-49.

Hence, with the “passive monitoring” of Hertz *et al.*, no customer actions are required. In addition, and as Herz *et al.* states, “active” feedback systems only consider how much a customer likes a particular video program by rating the program. Herz *et al.* describes one example of “active” feedback:

A key feature of many video/cable television installations is that it is possible to obtain active feedback from the customer: either simply what was watched at each time or, more completely, how much the customers (in their estimation) liked what they saw. *Id.* at col. 30, ll. 39-43.

Herz *et al.* also discloses that customers can assign preferred levels to characteristics of a video program using an active feedback system:

As noted above, one way to establish an initial customer profile is to show an unrated program or portion of a program to a target audience and to assign to the unrated program a combination of the customer profiles of those who actually watched the program or portion of the program from beginning to end or to assign ratings inputted by those who completed a survey. A similar technique may be used for error correction or for creating initial customer profiles. In particular, the customer is exposed to a series of short sections of different video programs. Each section is characterized by a few characteristics, and the assigned characteristic level of each of the characteristics is presented to the customer. The customer is then asked to **state his/her most preferred level** for the characteristic given the assigned characteristic level for the viewed section of the video program. (emphasis added). *Id.* at col. 14, ll. 24-40.

Thus, and as described by Herz *et al.*, “active” feedback is a mechanism by which customers rate a video program.

In order to establish a *prima facie* case of obviousness, “all the claim limitations must be taught or suggested by the prior art.” See *Manual of Patent Examination and Procedure* § 2143.03 (hereinafter “MPEP”). In contrast to the system and method disclosed in Herz *et al.*, amended claim 1 requires “developing the viewer profile based on viewer interaction with the replacement advertising segment.” Herz *et al.* merely discloses two different feedback systems usable to determine a customer’s rating of a video program. In either system, the customer does not interact with the video program.

With a passive feedback system, Herz *et al.* specifically states that no customer actions are required. With an active feedback system, the customer merely assigns a rating to a video program that the customer has watched. According to Herz *et al.*, the rating assigned to the video program is not based on interacting with the video program, but whether the customer liked or disliked a section of the video program. As Herz *et al.*, discloses above, “[t]he customer is then asked to state his/her most preferred level for the characteristic given the assigned characteristic level for the viewed section of the video program.” As is apparent from reading the specification, the term “viewer interaction” means more than mere rating of a viewed video program after its completion. For example, new claim 45 further defines that viewer interaction includes applying a modification selected by the viewer. In Herz *et al.*, no modifications are applied to the video program, and thus, there is no viewer interaction with the video program as is understood by Applicants.

Hence, for at least the reason that Herz *et al.* does not disclose the limitation of “developing the viewer profile based on viewer interaction with the replacement advertising segment,” amended claim 1 is patentable over the cited references. As amended claim 1 is patentable, the claims that depend therefrom are also patentable.

### **Claims 11, 13-15 and 17-20: Rejections Under 35 U.S.C. § 103(a)**

Claims 11, 13-15, and 17-20 have been rejected under 35 U.S.C. § 103(a). The Applicants respectfully traverse these rejections in view of the following remarks and arguments. In particular, Applicants respectfully submit that amended claim 11 is allowable over Akiyama *et al.* in view of Reynolds *et al.* in further view of Blackketter *et al.*, and in further view of Herz *et al.*, and that because claim 11 is allowable, the claims that depend therefrom are also allowable.

In order to establish a *prima facie* case of obviousness, “all the claim limitations must be taught or suggested by the prior art.” See *MPEP* § 2143.03. Amended claim 11 now recites “developing the viewer profile based on viewer interaction with replacement segment.” With regard to now canceled claim 3, the Office Action recognizes that Akiyama *et al.*, Reynolds *et al.*, or Blackketter *et al.*, alone or in combination, do not

teach or suggest this limitation. However, the Office Action cited Herz *et al.* as disclosing “a passive feedback technique...whereby the programming viewed by the customers are automatically monitored and used to adjust the customer profiles.” Office Action, p. 10. As discussed above with regard to amended claim 1, Herz *et al.* does not, in fact, teach or suggest the limitation of “developing the viewer profile based on viewer interaction with replacement segment.” As previously discussed, Herz *et al.* simply discloses a system and method where customers can rate a video program using an active feedback system or a passive feedback system. As mentioned above, a passive feedback system requires no customer action, and with an active feedback system, the customer provides a “preferred level” for a characteristic of a section of a television program after it is viewed. In either system, the customer merely watches the video program, and there is no viewer interaction with the video program. Hence, Herz *et al.* does not disclose the limitation of amended claim 11 of “developing the viewer profile based on viewer interaction with replacement segment.”

Thus, claim 11 is patentable for at least the reason that Akiyama *et al.* in view of Reynolds *et al.* in further view of Blackketter *et al.*, and in further view of Herz *et al.*, do not disclose “developing the viewer profile based on viewer interaction with replacement segment.” As claim 11 is patentable, the claims that depend therefrom are also patentable for at least this reason.

#### **Claims 37-38, 40, and 42-43: Rejections Under 35 U.S.C. § 103(a)**

Claims 37-38, 40, and 42-43 have been rejected under 35 U.S.C. § 103(a). Claims 37-38, 40, and 42-43 have been rejected as being unpatentable over Akiyama *et al.* in view of Reynolds *et al.* and in further view of Blackketter *et al.*

The Applicants respectfully traverse the rejections as to claims 37-38, 40, and 42-43 in view of the following remarks and arguments. In particular, Applicants respectfully submit that independent amended claim 37 is allowable over Akiyama *et al.* in view of Reynolds *et al.* in further view of Blackketter *et al.* As claim 37 is allowable, the claims that depend therefrom are also allowable.

Amended claim 37 now recites additional limitations, including subject matter from canceled claim 2 and canceled claim 3. Amended claim 37 recites that the multimedia controller has “a first memory storage for storing viewer profiles,” “the animated video replacement advertisement being selected based on a viewer profile stored in the first memory storage,” and that “the multimedia controller is further operative to develop the viewer profile based on viewer interaction with the animated video replacement advertising segment.”

In order to establish a *prima facie* case of obviousness, “all the claim limitations must be taught or suggested by the prior art.” See *MPEP* § 2143.03. As claim 37 now includes the subject matter of canceled claim 2 and canceled claim 3, claim 37 is now patentable over Akiyama *et al.* in view of Reynolds *et al.*, and in further view of Blackketter *et al.* However, with regard to the subject matter of canceled claim 3, the Office Action cited Herz *et al.* as disclosing “a passive feedback technique ... whereby the programming viewed by the customers are automatically monitored and used to adjust the customer profiles.” Office Action, p. 10.

Herz *et al.* does not teach or suggest the limitation of “the multimedia controller is further operative to develop the viewer profile based on viewer interaction with the animated video replacement advertising segment.” As previously discussed, Herz *et al.* simply discloses a system and method where customers can rate a video program using an active feedback system or a passive feedback system. As mentioned above, a passive feedback system requires no customer action, and with an active feedback system, the customer provides a “preferred level” for a characteristic of a viewed section of a video program. In either system, the customer merely watches the video program, and there is no interaction with the video program. Hence, Herz *et al.* does not disclose the limitation of amended claim 37 of a multimedia controller operative to “to develop the viewer profile based on viewer interaction with the animated video replacement advertising segment.”

Thus, amended claim 37 is allowable for at least the reason that Akiyama *et al.* in view of Reynolds *et al.* in further view of Blackketter *et al.*, and in further view of Herz *et al.*, do not teach or suggest that “the multimedia controller is further operative to develop

the viewer profile based on viewer interaction with the animated video replacement advertising segment.” As claim 37 is allowable, the claims that depend therefrom are also allowable for at least this same reason.

### **New Claims 44-52**

Applicants have added new claims 44-52. Claims 44-46 are dependent on claim 1 and further define developing a viewer profile based on viewer interaction with the replacement advertising segment, and further refine the terminology of viewer interaction. Claims 47-49 are dependent on claim 11 and further define developing a viewer profile based on viewer interaction with the replacement segment, and further refine the terminology of viewer interaction. Lastly, claims 50-52 are dependent on claim 37 and further refine the components of the system for displaying enhanced television broadcast programs.

Applicants respectfully submit that Akiyama *et al.* in view of Reynolds *et al.* in further view of Blackketter *et al.*, and in further view of Herz *et al.* do not teach or suggest all of the limitations of any of these new claims. For example, none of these reference, alone or in combination, teach or suggest the limitation of claim 44 of “retaining the viewer selection of the at least one modification to the replacement advertising segment as part of the viewer profile.” While this is just one example, there are other limitations of these claims which would permit their allowance over the cited references.

### **Conclusion**

Therefore, in view of the above amendment and remarks, Applicants respectfully submit that this application is in condition for allowance and such action is earnestly requested.

If for any reason the Examiner is not able to allow the application, he is requested to contact the Applicants’ undersigned attorney at (312) 321-4200.

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